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## **INTRODUCTION**

Defendant Kyle Skinner (“Mr. Skinner”) is charged in this Court with one count of Drug Dealing, one count of Drug Possession, one count of Possession for Drug Paraphernalia, and one count of Failure to use a Turn Signal pursuant to 21 Del. C. 1953, § 4155(b). Mr. Skinner moved to suppress the basis of the alleged traffic violation based upon the lack of evidence that he failed to use a turn signal. Because the State of Delaware (“State”) failed to meet its burden, the Motion to Suppress is **GRANTED**.

## **STATEMENT OF FACTS**

According to the testimony of the New Castle County Police Department (“NCCPD”) officer (“Officer”) who pulled Mr. Skinner over on January 2, 2021, the Officer was working on the mobile enforcement team for the NCCPD. The Officer explained he was behind a vehicle that did not utilize a turn signal when turning left from Henderson Hill Road onto Linden Hill Road. At the time, the Officer was in a marked police Tahoe that was not equipped with a Mobile Video System (“MVS”) to record the stop and his body-camera was not operational because the battery had died. The Officer initiated a stop of the vehicle and approached to speak with Mr. Skinner. The Officer testified he did not smell marijuana upon approaching the vehicle or interacting with Mr. Skinner. He asked for Mr. Skinner’s license and registration. The Officer further testified another officer came into the scene of the

stop within a few minutes and the additional officer's body camera was fully operational, however, such footage was not presented. Mr. Skinner was arrested. The Officer stated he took Mr. Skinner into custody that day for "marijuana in the vehicle for the probable cause to search," without any further explanation of the circumstances surrounding such discovery of the marijuana, any search of the vehicle or anything he found.

## **PARTIES' CONTENTIONS**

### ***Mr. Skinner's Position***

Mr. Skinner argues the basis for the charge of the traffic violation should be suppressed. Mr. Skinner's suppression cites *Won Sun v. California*, "*Deburry & Lolly v. State*", and an allegation the Officer who stopped him violated NCCPD policy by not having safety equipment on. With Mr. Skinner citing *Won Sun*, the Court understands Mr. Skinner's argument to be the stop was invalid, making the further search of his vehicle to also be invalid. This is because the Police Officer alleges Mr. Skinner did not use his left turn signal while Mr. Skinner alleges he did, and the Police Officer did not use MVS during the stop so there is not proof of Mr. Skinner's failure to use a turn signal. Mr. Skinner, in the hearing, pointed to the NCCPD Policy Directive 41 Appendix 41-D to argue it is the policy of NCCPD to maintain mobile audio/video recording systems for use in designated Division of Police vehicles. Regarding the *Lolly Deberry* issue, it seems Mr. Skinner argued

the policy agency failed to collect and preserve the MVS/body cam footage because at the time of the filing, it seems he was under the impression MVS/body cam footage is required for every vehicle stop.

### ***State's Position***

The State, as apparent from the arguments and its single page response containing no facts to help the Court understand its position, understood the Motion to deal with one singular Lolly Deberry issue. The State argued in its paper, NCCPD collected and preserved all evidence to the case and the evidence was turned over to Mr. Skinner. As such, the State argues it did not fail to collect and/or preserve evidence in the case.

### **STANDARD OF REVIEW**

In a suppression hearing, the Court sits as the finder of fact, assesses witness credibility, and weighs the evidence.<sup>1</sup> Since the motion challenges a warrantless search, the burden is on the State to establish that there was probable cause to justify a warrantless search of a vehicle.<sup>2</sup> Under the automobile exception to the warrant requirement, the police must have probable cause to believe that an automobile is carrying contraband or evidence of a crime before they may lawfully

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<sup>1</sup> *State v. Dewitt*, 2017 WL 2209888, at \*1 (Del. Super. May 18, 2017).

<sup>2</sup> *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001) (emphasis omitted).

search the vehicle without a warrant.<sup>3</sup> Probable cause is subject to a totality of the circumstances analysis. To establish probable cause, the police are required to assess whether there are “facts which suggest, when *those facts* are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime.”<sup>4</sup>

## **DISCUSSION**

First, the Court notes the only facts it knows relating to this case is there was a traffic stop and Mr. Skinner was taken into custody for “marijuana found in the vehicle for the probable cause to search.” We do not have any testimony from the Officer relating to where the marijuana was found in the vehicle, the subsequent search of the vehicle, what items were found in the search, or whether a search was initiated incident to an arrest.

Individuals are protected from unreasonable searches and seizures in Delaware by both the Fourth Amendment to the United States Constitution and Article I, § 6 of the Delaware Constitution. Under the Fourth Amendment and under Article I, § 6 of the Delaware Constitution, police may search a car without a warrant if they have probable cause to believe that the car contains contraband or evidence

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<sup>3</sup> *Tatman v. State*, 494 A.2d 1249, 1251 (Del. 1985).

<sup>4</sup> *Id.* (emphasis in original).

of criminal activity.<sup>5</sup> The legitimacy of motor vehicle stops is tied to the existence of a “reasonable suspicion that a legal violation has occurred.”<sup>6</sup>

A “reasonable suspicion” exists when the officer can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.”<sup>7</sup> The Delaware Supreme Court has recognized that “the quantum of evidence necessary for reasonable suspicion is less than that which is required for probable cause to arrest.”<sup>8</sup>

However, even if the stop of the vehicle is lawful, the duration and execution of a traffic stop is limited by the initial purpose of the stop.<sup>9</sup> Any investigation of the vehicle or its occupants beyond that required to complete the purpose of the traffic stop constitutes a separate seizure that must be supported by independent facts sufficient to justify the additional intrusion.<sup>10</sup> This fact intensive inquiry ensures that the pursuit of the investigation unrelated to the traffic violation is not unreasonably attenuated from the initial purpose of the stop.<sup>11</sup>

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<sup>5</sup> *Tann v. State*, 21 A.3d 23, 27 (Del. 2011); *State v. Prouse*, 382 A.2d 1359, 1363 (Del. 1978), *aff’d*, 440 U.S. 648 (1979).

<sup>6</sup> *Prouse*, 382 A.2d at 1361.

<sup>7</sup> *Juliano v. State*, 2020 6815414, at \*14 (Del. Nov. 12, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> *Caldwell v. State*, 780 A.2d 1037, 1047 (citing *Ferris v. State*, 355 Md. 356, 735 A.2d 491, 499 (1999)).

<sup>10</sup> *Id.*

<sup>11</sup> *Juliano*, 2020 6815414 at \*15.

According to the Delaware Supreme Court, this “standard respects the State's interest in investigating suspicious conduct during a valid traffic stop, while restricting police officers’ authority to employ marginally applicable traffic laws as a device to circumvent constitutional search and seizure requirements.”<sup>12</sup> This standard is intended to provide an appropriate measure of protection for motorists against arbitrary police conduct.<sup>13</sup>

Accordingly, the Court's analysis is twofold. First, the Court must determine whether there was probable cause for the traffic stop. If so, the Court then determines whether independent facts support a further seizure, or search, of the vehicle. To put it simply, any investigation of Mr. Skinner's vehicle beyond what is required to complete the purpose of his traffic stop constitutes a separate seizure that must be supported by independent facts sufficient to justify the additional intrusion.

There was not enough information provided by the State such as when the officers first started following Mr. Skinner's car, how far they followed him and what they observed to determine whether he violated 21 Del. C. § 4155(b). The statute states that a “signal of intention to turn or move right or left when required shall be given continuously during not less than the last 300 feet or more than ½ mile traveled

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<sup>12</sup> *Caldwell*, 780 A.2d 1048.

<sup>13</sup> *Juliano*, at \*15.

by the vehicle before turning.”<sup>14</sup> The only information provided by the State was that the Officer observed Mr. Skinner fail to signal when turning left from Henderson Hill Road onto Linden Hill Road.

Although the State failed to meet its burden of proving a valid traffic stop, the Court will go on to determine whether there was probable cause to search.

The State's evidence during the hearing was underwhelming. Important information was lacking because details were not provided as the State did not believe it needed to prove the validity of the traffic stop or prove there was probable cause for the search. The Court had to ask the Officer why he had arrested Mr. Skinner.

The only evidence offered by the State was the Officer's testimony relating to why he pulled over the vehicle. As explained, such testimony lacked the specificity for this Court to determine whether the stop was valid. Additionally, no evidence was offered as to whether independent facts support a further seizure, or search, of the vehicle. The Officer stated only there was marijuana in the vehicle without any specificity regarding where it was, what it looked like, or how it was discovered, however he did not smell the odor emanating from Mr. Skinner's car. Here, weighing against a finding of probable cause is that (1) Mr. Skinner was arrested for

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<sup>14</sup> 21 Del. C. § 4155(b).



“marijuana in his vehicle” without any specification around the discovery, (2) there was no odor of marijuana, and (3) the arrival of an additional officer who did have a body-camera on, but such footage was not shown to the Court. As such, any items found in the search should be suppressed.

***New Castle County Policy does not require all NCCPD vehicles be equipped with MVS.***

Mr. Skinner offered NCCPD policy regarding maintaining MVS for use in designated Division of Police vehicles. Mr. Skinner argued the lack of MVS in the Officer’s vehicle constituted a violation of NCCPD’s policies. The State argued the Officer was not in a designated police vehicle that was equipped with MVS. The Court reads this policy contrary to Mr. Skinner’s understanding, the policy does not require all NCCPD vehicles to be equipped with MVS. The Officer did not violate NCCPD policy by not utilizing a car equipped with MVS. The policy requires only designated vehicles be equipped.

Additionally, this Court notes Mr. Skinner’s presentation did not help his position. With Mr. Skinner’s repeated refusal to allow the hearing to go forward after an explanation was provided to Mr. Skinner, the Court had to ask the State to present its witnesses over Mr. Skinner’s loud interruptions. Mr. Skinner’s presentation and decorum before the Court was inappropriate and almost caused his hearing to be terminated in the State’s favor.

The determination of this case was based on the lack of record before this Court.

Based on a totality of circumstances, the Motion to Suppress is **GRANTED**.

**IT IS SO ORDERED.**

/s/ Calvin L. Scott  
**Judge Calvin L. Scott, Jr.**